

31752

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218483

DATE: July 23, 1985

MATTER OF: Progressive Learning Systems

DIGEST:

1. Protest challenging contracting agency's technical evaluation of protester's proposal is denied where the protester fails to show that the agency's determination that the proposal does not provide for adequate quality control oversight was unreasonable. The principal ground for the agency's determination, the small size of the protester's staff, clearly is relevant to the protester's capacity to oversee concurrent multiple projects as contemplated by the solicitation.
2. Where an offeror's proposal has been found technically unacceptable, the contracting agency need not evaluate the offeror's price proposal, since the offeror is not being considered for award.
3. Agency has complied with the Competition in Contracting Act where it has notified GAO of its written finding that urgent and compelling circumstances which significantly affect the interests of the United States require that award be made notwithstanding a pending protest.

Progressive Learning Systems (PLS) protests the rejection of its proposal under request for proposals (RFP) No. OPM-RFP-85-19, issued by the Office of Personnel Management (OPM). OPM rejected the protester's proposal after the submission of best and final offers because it determined that the proposal was technically unacceptable. The protester complains that the agency's technical evaluation of its proposal was improper. We deny the protest.

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The agency proposes to enter into a number of fixed-price requirements contracts under the RFP for a variety of services related to evaluating and improving workplace productivity. The RFP listed the types of services that would be required, the labor skills needed to perform the services, and estimates of the number of hours the agency expected it would require from each labor skill. The RFP stated that the agency sought one or more sources capable of providing assistance over the full range of programs and able to conduct several projects concurrently. In this regard, the RFP instructed offerors specifically to "[i]ndicate the ability of your organization to undertake multiple projects simultaneously." In addition, the offerors' technical proposals were to contain an organizational description including procedures for providing quality assurance and general management oversight of subcontractors and other resources "not integral" to the offeror's own organization.

Proposals were received from 20 offerors by the initial closing date of January 11, 1985. Of those proposals, five were found technically acceptable as submitted; 6 were found technically unacceptable; and nine proposals, including the protester's, were found unacceptable as submitted, but subject to being made acceptable through clarifications or changes to the proposals. Discussions were then held with all offerors but the six found technically unacceptable, followed by submission by the offerors of revised technical proposals. On March 28, the technical evaluation panel determined that three of the revised proposals, including the protester's, were technically unacceptable. The protester was notified of its disqualification on or about March 28.

The agency's initial technical evaluation of the protester's proposal, contained in the technical evaluation panel's memorandum dated February 28, described several strengths and weaknesses of the proposal and ranked PLS' proposal eleventh out of those evaluated. The strengths derived from the professional qualifications of the staff PLS proposed to use. The proposal's weaknesses involved the organizational management procedures proposed by PLS; specifically, the technical evaluation panel's memorandum indicated concern about the protester's experience as an organization; expressed confusion regarding PLS' plan for establishing a point of contact with OPM; and found that PLS had not sufficiently demonstrated that it could organize to control quality and schedules.

According to OPM, these findings were read to PLS directly from the technical evaluation panel's memorandum during a meeting held on March 6 to discuss the PLS proposal. In the revision to its technical proposal which PLS subsequently submitted, PLS responded to four points which it stated were identified by OPM as weaknesses in its proposal. OPM's final evaluation of the PLS proposal, as revised, found the proposal unacceptable primarily because PLS had not shown that its own staff was sufficient to control the quality of work on the multiple projects which OPM anticipated awarding to individual offerors. PLS' final ranking was 13th out of 14.

As a preliminary matter, the protester contends that OPM's concern about its capacity to provide quality assurance oversight was not communicated to PLS during the March 6 meeting. In our view, the record does not support this contention. OPM states that the technical evaluation panel's memorandum was read to PLS during the meeting held to discuss the PLS proposal; that memorandum clearly lists quality assurance as one of the panel's concerns. In addition, the discussion in PLS' revised proposal of the weaknesses identified by OPM confirms that OPM communicated its concern to PLS. Specifically, in the second of the four points addressed in its revised proposal, PLS states that OPM requested additional information showing that PLS could control quality and schedules, clearly a recognition of OPM's concern about PLS' quality assurance capabilities.

The protester's principal contention is that OPM's technical evaluation of its quality assurance capabilities was improper. Our Office will question an agency's determination concerning the technical merits of a proposal only upon a clear showing that the determination is unreasonable, an abuse of discretion, or involves a violation of the procurement statutes or regulations. Computer Sciences Corp., B-210800, Apr. 17, 1984, 84-1 CPD ¶ 422. We find that PLS has made no such showing.

With regard to quality assurance and management oversight, the protester's proposal designated the firm's president, one of two professional staff members of PLS, as the person responsible for negotiating and fulfilling all contractual obligations; ensuring the availability of information and resources necessary to achieve project outcomes; resolving any concerns or conflicts that may arise during the performance of a project; and ensuring

the overall quality of all project deliverables. With regard to procedures for overseeing work by consultants hired by PLS, PLS' proposal provided only for "review of the consultant's actual results on each step of the project plan on a regular basis (weekly, monthly, as appropriate)." In OPM's view, PLS' proposed assignment of one person from its two-person professional staff was insufficient to carry out the project management functions required when conducting multiple projects concurrently, as anticipated under the RFP.

The protester contends that OPM ignored the planned participation of Systems Corporation of America (SCA), its proposed principal subcontractor, when assessing PLS' quality assurance capability; in this regard, PLS stresses the professional qualifications of SCA and its experience in working with PLS. In our view, SCA's participation does not bear on the issue of the protester's own quality assurance capability. Although PLS at different points in its argument characterizes SCA as its co-bidder or joint venturer, SCA in fact would participate as a subcontractor only, with no direct responsibility to OPM under the contract. Thus, while SCA's qualifications are relevant to the potential for producing high quality work, its participation does not relate to the primary weakness highlighted by OPM, the protester's limited ability to manage and oversee work not performed in-house.

The protester next states that it was assured by OPM during discussions that the small size of its firm would not reflect negatively on the PLS proposal. PLS argues that it was inconsistent with this assurance for OPM to then disqualify the proposal principally because it assigned the quality control function to one person. We disagree. According to PLS' minutes of the March 6 meeting, OPM agreed only that PLS' size would not itself be a negative factor, provided that PLS successfully responded to the weaknesses in its proposal, which included its quality control procedures. Thus, even under PLS' version of OPM's position, there is no indication that OPM would disregard the protester's size as it related to the protester's capability to satisfy a particular RFP requirement; in fact, any agreement to do so would have been inconsistent with the evaluation criteria in the RFP which provided that offerors would be evaluated on the basis of their capacity to manage multiple projects.

The protester also argues that it adequately responded to OPM's concern by reiterating in its revised technical proposal that the president of PLS would be the central point of contact between PLS and OPM. As noted above, confusion regarding PLS' proposed arrangement for maintaining contact with OPM during contract performance was identified during discussions as a weakness in PLS' proposal; however, that point was raised by OPM as a separate shortcoming of the PLS proposal, in addition to PLS' limited ability, in OPM's view, to provide adequate management and quality control oversight. Thus, even assuming that PLS adequately responded to OPM's concern regarding the point of contact issue (an assumption with which the evaluation panel did not agree), it would have no effect on OPM's unrelated determination regarding PLS' oversight capability.

The protester contends that even if OPM determined that PLS was unable to effectively manage a large number of projects concurrently, OPM should have rated it acceptable to receive awards involving fewer concurrent projects. We disagree. First, we see no indication that OPM considered the protester capable of providing adequate quality control oversight for any number of multiple projects, as PLS assumes. More important, OPM's final technical evaluation found PLS unable to oversee concurrent projects in the quantity anticipated, and we see no basis on which to require that OPM change its procurement plan merely to accommodate the protester's limited capacity.

The protester also challenges various remarks made on their worksheets by the individual members of the technical evaluation panel, relating principally to PLS' organizational capabilities and the professional qualifications of its staff. First, as discussed above, the technical panel's primary basis for disqualifying PLS was its limited management oversight capability, and it appears that this deficiency was sufficient in OPM's view to make PLS' proposal technically unacceptable even if PLS' contentions regarding the individual evaluators' remarks were found to have merit. More important, PLS' disqualification was based on the findings of the technical panel as a whole, not on the evaluators' worksheet remarks. The worksheets reflect only the preliminary views of the individual evaluators, which were then integrated into the decision of the panel on which the protester's disqualification was based. Thus, even assuming that PLS successfully refuted the remarks on any individual evaluator's worksheet, it

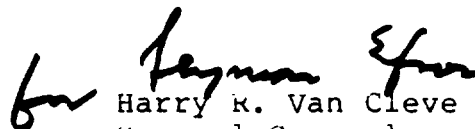
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would not have necessarily demonstrated that the agency's actual basis for disqualifying PLS, the findings of the panel as a whole, was unreasonable. We find it unnecessary to address in detail those of PLS' contentions which are based on remarks in the evaluators' worksheets since the protester has not shown that the evaluator panel's conclusions were unreasonable.

Further, the protester maintains that it was improper for the agency to fail to evaluate its price proposal since the RFP assigned equal weight to the offerors' technical and price proposals. Because the protester was found technically unacceptable, its price proposal need not be evaluated since its proposal was not being considered for award. See CBM Electronic Systems, Inc., B-215679, Jan. 2, 1985, 85-1 CPD ¶ 7.

Finally, PLS argues that OPM violated the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, title VII, 98 Stat. 1175, by proceeding with the award notwithstanding PLS' pending protest. By letter of July 5, 1985, OPM's Associate Director for Administration notified our Office that OPM had executed a written finding that urgent and compelling circumstances which significantly affect the interests of the United States would not permit waiting for our decision and that OPM was proceeding with award. OPM has complied with the Act by informing us of its written determination to go forward with award. See 31 U.S.C. § 3553(c)(2)(A) and (B), as added by CICA.

The protest is denied.


Harry K. Van Cleave
General Counsel